

Billing Code 3410-05P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 761

RIN 0560-AF70

Small Hog Operation Payment Program

AGENCY: Farm Service Agency, USDA

ACTION: Interim Rule with request for comments

SUMMARY: This interim rule sets forth the regulations for the Small Hog Operation Payment Program as authorized by clause (3) of section 32 of the Act of August 24, 1935 (7 USC 612c). Producers of hogs may receive a direct payment of up to \$5 for each eligible hog to help offset producers' financial losses on hogs sold during the 6-month period from July 1, 1998, through December 31, 1998. This action is designed to provide immediate financial assistance to hog producers who recently experienced the lowest market prices in over five decades.

DATES: Effective February 5, 1999. Comments on this rule must be received by March 12, 1999, in order to be assured of consideration. Comments on the information collections in this rule must be received by March 12, 1999, in order to be assured of consideration.

ADDRESSES: Comments should be mailed to Grady Bilberry, Director, Price Support Division (PSD), Farm Service Agency (FSA), United States Department of Agriculture (USDA), STOP 0512, 1400 Independence Avenue, SW., Washington, DC 20250-0512;

telephone: (202) 720-7901; e-mail: [candy\\_thompson@wdc.fsa.usda.gov](mailto:candy_thompson@wdc.fsa.usda.gov). Comments may be inspected in the Office of the Director, PSD, FSA, USDA, Room 4095 South Building, Washington, D.C., between 7:30 a.m. and 4:30 p.m., Monday through Friday, except holidays. A copy of this interim rule is available on the PSD home page at <http://www.fsa.usda.gov/dafp/psd/>.

FOR FURTHER INFORMATION CONTACT: Candace Thompson, (202) 720-4584.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

This interim rule is in conformance with Executive Order 12866 and has been determined to be significant and therefore has been reviewed by the Office of Management and Budget.

##### Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because the Farm Service Agency (FSA) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

##### Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

##### Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. The

provisions of this rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. Before any legal action may be brought regarding determinations of this rule, the administrative appeal provisions set forth at 7 CFR part 780 must be exhausted.

#### Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3014, subpart V, published at 48 FR 29115 (June 24, 1983).

#### Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

#### Paper Work Reduction Act of 1995

In accordance with the Paperwork Reduction Act of 1995, FSA has submitted an emergency information collection request (ICR) to OMB for the approval of the Small Hog Operation Payment Program report as necessary for the proper functioning of the program.

Title: Small Hog Operation Payment Program

OMB Control Number: 0560- 0193.

Type of Request: Request for a New Information Collection Package.

Abstract: Hog operations are eligible to receive direct payments provided they make

certifications that attest to their eligibility to receive such payment. These operations must certify: (1) the number of hogs marketed; (2) that the hogs were marketed during the last 6 months of 1998; (3) that the hogs were not marketed under a fixed-price or cost-plus contract; and (4) that the operation was still in the business of farming at the time of the Small Hog Operation Payment Program request. The information collection will be used by FSA to approve Form FSA-1042 or to determine the program eligibility of the hog operation in accordance with this subpart. FSA considers the information collected essential to prudent eligibility determinations and payment calculations. The eligibility requirements have been established to target the direct payments towards smaller operations. Additionally, without accurate information on slaughter hog and feeder pig operations, the national payment rate would be inaccurate resulting in payments being made to ineligible recipients, and compromising the integrity and accuracy of the program.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15 minutes per response.

Respondents: Hog Operations.

Estimated number of Respondents: 100,000

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 26,250

Proposed topics for comment include: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of

burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information collected; or (d) ways to minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to the Desk Officer for Agriculture, Office of Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to Grady Bilberry, Director, Price Support Division, Farm Service Agency, United States Department of Agriculture, STOP 0512, 1400 Independence Avenue. S.W., Washington, D.C. 20250-0512, telephone (202) 720-7901.

#### Executive Order 12612

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

#### Background

Clause (3) of section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c) authorizes the Secretary of Agriculture to: “Reestablish farmers’ purchasing power by making payments in connection with the normal production of any agricultural commodity for domestic consumption.”

During the past 18 months, a number of factors have produced a serious economic crisis which threatens the existence of small hog producers throughout the United States.

The estimated 114,000 hog operations in the United States account for about \$10 billion in hog production annually or about 5 percent of the total U.S. farm production. Hog prices declined steadily since June 1997, falling below \$20 per hundredweight in late 1998. At these disastrously low prices many producers have lost \$50-\$75 per head because sale prices are below actual cost of production.

Payments to hog operations will offset a portion of the per-head losses small producers incurred marketing their hogs. These payments will provide those eligible with an immediate infusion of cash to help pay operating expenses and meet other financial obligations. Payments will be limited to hog operations which produced in the United States and sold less than 1,000 head of hogs during the specified marketing period. Eligible hog operations can receive up to \$5 per slaughter-weight hog, or the equivalent for feeder pigs, which were owned and marketed from July 1, 1998, through December 31, 1998. Maximum payments to these operations will be limited to \$2,500. If the hog operation is owned by one or more individuals or entities who have an annual gross revenue of \$2.5 million or more in farming and ranching operations in calendar year 1998, the payment to the operation will be reduced by a pro rata share based upon the ownership interest of such entity or individual.

Two classes of hogs will be eligible, slaughter hogs or feeder pigs. Slaughter hogs include barrows, gilts, sows, and boars that are sold for immediate slaughter. Feeder pigs are young pigs that are sold to another person for further feeding for a period of more than 1 month. The per-head payment is established at \$5 for slaughter hogs and \$1.80 for feeder pigs, but will be less if a national factor is required to be applied so that total

outlays would not exceed the amount of funds available under this program. Hog operations making application for the benefits under this part shall self-certify the number of hogs in each class marketed during the specified marketing period.

Eligible hog operations must also: (1) have sold the hogs on a negotiated cash basis or on an eligible contract basis as provided by the program regulations during the marketing period; (2) be engaged in the business of producing and marketing agricultural products at the time of application; and (3) apply for cash payments during the application period. Hog producers shall self-certify that they meet all eligibility requirements.

Hog operations may apply in person at county FSA offices during regular business hours and at that time complete the Small Hog Operation Payment Program application on Form FSA-1042. Alternatively, hog operations may request the Small Hog Operations Payment Program application by mail, telephone, facsimile from their designated county FSA office or obtain the application via the Internet. The Internet website is located at [www.fsa.usda.gov/dafp/psd/](http://www.fsa.usda.gov/dafp/psd/). The completed application, Form FSA-1042, must be received by the hog operations' local county FSA office by the due date as specified in the program regulations and can be returned in person, by mail, or by facsimile.

At payment rates of \$5 for slaughter hogs and \$1.80 for feeder pigs, the total number of eligible applications may result in potential outlays that exceed the \$50 million authorized for the program. Accordingly, if necessary, a national payment factor will be established per head so that the total outlays will not exceed the \$50 million in funds made available under this program.

This rule is being made effective immediately. Because of the poor market conditions

that have recently faced hog operations, particularly small hog operations, a delay in making this assistance available would be contrary to the public interest and the purpose of the authorizing statute.

#### List of Subjects in 7 CFR Part 761

Direct payments to small hog operations, Reporting and record keeping requirements.

Accordingly, 7 CFR Chapter 7 is amended by adding Part 761 to read as follows:

#### PART 761--SMALL HOG OPERATION PAYMENT PROGRAM

1. Part 761 is added to read as follows:

##### Part 761--Small Hog Operation Payment Program

##### Table of Contents

##### Sec.

- 761.1 Applicability.
- 761.2 Administration.
- 761.3 Definitions.
- 761.4 Time and Method for Application.
- 761.5 Eligibility.
- 761.6 Rate of Payment and Limitations on Funding.
- 761.7 Appeals.
- 761.8 Misrepresentation.
- 761.9 Estates, trusts, and minors.
- 761.10 Death, incompetency, or disappearance.
- 761.11 Maintaining records.
- 761.12 Refunds; joint and several liability.

Authority: 7 U.S.C. 612c

##### § 761.1 Applicability.

This part establishes the Small Hog Operations Program. The purpose of this program is to provide benefits to hog operations under clause (3) of section 32 of the Act



of August 24, 1935 (7 U.S.C. § 612c) in order to reestablish their purchasing power in connection with the normal production of hogs for domestic consumption.

§ 761.2 Administration.

(a) This part shall be administered by the Farm Service Agency (FSA) under the general direction and supervision of the Deputy Administrator for Farm Programs, FSA. The program shall be carried out in the field by FSA State and county committees (State and county committees).

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations in this part, as amended or supplemented.

(c) The State committee shall take any action required by this part which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with the regulations of this part; or

(2) Require a county committee to withhold taking any action which is not in accordance with the regulations of this part.

(d) No delegation herein to a State or county committee shall preclude the Deputy Administrator for Farm Programs, FSA, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator for Farm Programs, FSA, may authorize State and county committees to waive or modify deadlines and other program requirements in cases

where timeliness or failure to meet such other requirements does not adversely affect the operation of the program.

### § 761.3 Definitions

The definitions set forth in this section shall be applicable for all purposes of administering the Small Hog Operation Payment Program established by this part.

Application means the Small Hog Operation Payment Program Application, FSA-1042.

Cost-Plus Contract means an agreement between a hog operation and a purchaser which bases payment to the hog operation on the estimated cost of production of a hog plus a profit margin.

Department means the United States Department of Agriculture.

Eligible Hogs means feeder pigs and slaughter hogs.

Farm Service Agency or FSA means the Farm Service Agency of the Department.

Feeder Pigs means young pigs that are sold to another person for further feeding for a period of more than 1 month.

Fixed-Price Contract means an agreement between a hog operation and a purchaser which bases payment at a negotiated fixed price and includes contracts that may specify the duration and minimum and/or maximum number of hogs to be delivered during the contract period.

Hog Operation means any person or group of persons who as a single unit raise hogs and whose production and facilities are located in the United States.

Marketing Period means the period beginning on July 1, 1998, and ending on

December 31, 1998.

Negotiated Cash Sales means a sale in which the price is determined by interactions between the hog operation and the purchaser during the current day, for delivery within the next 7 slaughter days, and does not include hogs which are sold under contract.

Person means any individual, group of individuals, partnership, corporation, estate, trust, association, cooperative, or other business enterprise or other legal entity who is, or whose members are, a citizen or citizens of, or legal resident alien or aliens in the United States.

Secretary means the Secretary of the United States Department of Agriculture or any other officer or employee of the Department who has been delegated the authority to act in the Secretary's stead with respect to the program established in this part.

Slaughter Hogs means barrows, gilts, sows, and boars that are sold for immediate slaughter.

United States means the 50 States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 761.4 Time and Method for Application.

(a) Hog operations may obtain an application, Form FSA-1042 (Small Hog Operation Payment Program Application), in person, by mail, by telephone, or by facsimile from any county FSA office. In addition, applicants may download a copy of the FSA-1042 at <http://www.fsa.usda.gov/dafp/psd/>.

(b) A request for benefits under this part must be submitted on a completed Form FSA-1042. The Form FSA-1042 should be submitted to the FSA county office serving

the county where the hog operation is located but, in any case, must be received by the FSA County Office by the close of business on February 12, 1999. Applications not received by the close of business on February 12, 1999, will be returned as not having been timely filed and the hog operation will not be eligible for benefits under this program.

(c) The hog operation requesting benefits under this part must certify with respect to the accuracy and truthfulness of the information provided in their application for benefits. All information provided is subject to verification and spot checks by FSA. Refusal to allow FSA or any other agency of the Department of Agriculture to verify any information provided will result in a determination of ineligibility. Data furnished by the applicant will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without it program benefits will not be approved. Providing a false certification to the Government is punishable by imprisonment, fines and other penalties.

§ 761.5 Eligibility.

(a) If a hog operation is owned by one or more individuals or entities who have an annual gross revenue of \$2.5 million or more in farming and ranching operations in calendar year 1998, the payment to the operation will be reduced by a pro rata share based upon the ownership interest of such entity or individual.

(b) To be eligible to receive cash payments under this part, a hog operation must:

- (1) Have sold fewer than 1,000 hogs (produced in the United States) during the period of July 1, 1998, through December 31, 1998;
- (2) Have sold hogs on a negotiated cash basis or under a contract other than a

fixed-price or cost-plus contract during the marketing period;

(3) Be engaged in the business of producing and marketing agricultural products at the time of filing the application; and

(4) Apply for payments during the application period.

(c) Hogs marketed during the marketing period under fixed-price contracts, cost-plus contracts, or under any circumstance not equivalent to be eligible for benefits under this part with respect to hogs subject to such sales.

(d) A hog operation must submit a timely application and comply with all other terms and conditions of this part and those that are otherwise contained in the application to be eligible for benefits under this part.

§ 761.6 Rate of Payment and Limitations on Funding.

(a) Benefits under this part may be made to hog operations for the quantity of eligible slaughter hogs and feeder pigs actually marketed during the marketing period in accordance with the limitations set forth in this section. Payments will be calculated after the conclusion of the sign-up period, and shall be made in an amount determined by:

(1) Multiplying \$1.80 by the number of eligible feeder pigs marketed during the marketing period; plus

(2) Multiplying \$5 by the number of eligible slaughter hogs marketed during the marketing period;

(3) Limiting the payment per hog operation to \$2,500; and

(4) Reducing the amount paid to a hog operation because of limitations in funding as provided under (b) of this section.

(b) In the event that approval of all eligible applications would result in expenditures in excess of the \$50 million, FSA shall reduce the payment for each slaughter hog and feeder pig in such manner as FSA, in its sole discretion, finds fair and reasonable.

§ 761.7 Appeals.

Any hog operation which is dissatisfied with a determination made with respect to this part may make a request for reconsideration or appeal of such determination in accordance with the appeal regulations set forth at part 11 of this title and part 780 of this title.

§ 761.8 Misrepresentation and scheme or device.

(a) A hog operation shall be ineligible to receive assistance under this program if it is determined by the State committee or the county committee to have:

- (1) Adopted any scheme or device which tends to defeat the purpose of this program;
- (2) Made any fraudulent representation; or
- (3) Misrepresented any fact affecting a program determination.

(b) Any funds disbursed pursuant to this part to a hog operation engaged in a misrepresentation, scheme, or device, or to any other person as a result of the hog operation's actions, shall be refunded with interest together with such other sums as may become due. Any hog operation or person engaged in acts prohibited by this section and any hog operation or person receiving payment under this part shall be jointly and severally liable for any refund due under this section and for related charges. The remedies provided in this part shall be in addition to other civil, criminal, or administrative remedies which may apply.

§ 761.9 Estates, trusts, and minors.

(a) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such person furnishes evidence of the authority to execute such documents.

(b) A minor who is an otherwise eligible operator of a hog operation shall be eligible for assistance under this part only if such operation meets one of the following requirements:

(1) The minor establishes that the right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable program documents are executed by the guardian; or

(3) A bond is furnished under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

§ 761.10 Death, incompetency, or disappearance.

In the case of death, incompetency, disappearance or dissolution of a hog operation that is eligible to receive benefits in accordance with this part, such hog operation may receive such benefits.

§ 761.11 Maintaining records.

Hog operations making application for benefits under this program must maintain accurate records and accounts that will document that they meet all eligibility requirements specified herein and the number of head of slaughter hogs and feeder pigs sold during the marketing period. Such records and accounts must be retained for at least

3 years after the date of the cash payment to hog operations under this program.

§ 761.12 Refunds: joint and several liability.

(a) In the event there is a failure to comply with any term, requirement, or condition for payment arising under the application, or this part, and if any refund of a payment to FSA shall otherwise become due in connection with the application, or this part, all payments made under this part to any hog operation shall be refunded to FSA together with interest as determined in accordance with paragraph (c) of this section and late-payment charges as provided for in part 1403 of this chapter.

(b) All persons listed on a hog operation's application shall be jointly and severally liable for any refund, including related charges, which is determined to be due for any reason under the terms and conditions of the application or this part.

(c) Interest shall be applicable to refunds required of the hog operation if FSA determines that payments or other assistance were provided to the producer was not eligible for such assistance. Such interest shall be charged at the rate of interest which the United States Treasury charges the Commodity Credit Corporation (CCC) for funds, as of the date FSA made such benefits available. Such interest shall accrue from the date such benefits were made available to the date of repayment or the date interest increases as determined in accordance with applicable regulations. FSA may waive the accrual of interest if FSA determines that the cause of the erroneous determination was not due to any action of the hog operation.

(d) Interest determined in accordance with paragraph (c) of this section shall not be applicable to refunds required of the hog operation because of unintentional misaction on



the part of the hog operation, as determined by FSA.

(e) Late payment interest shall be assessed on all refunds in accordance with the provisions of, and subject to the rates prescribed in, 7 CFR part 792.

(f) Hog operations must refund to FSA any excess payments made by FSA with respect to such application.

(g) In the event that a benefit under this subpart was provided as the result of erroneous information provided by any person, the benefit must be repaid with any applicable interest.

Signed at Washington, D.C., on \_\_\_\_\_.

---

Administrator  
Farm Service Agency